IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATHAN SMITH	§	
	§	
vs.	§	Civil Action No. 4:07-00784
	§	
THE ABANDONED VESSEL, *in rem*	§	

INTERVENOR SORENSON'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF THE COURT:

Intervenor Marie Sorenson files this her Motion to Dismiss for Lack of Jurisdiction and alternatively For Failure to State a Claim as follows:

THIS COURT HAS NO JURISDICTION

1. Intervenor Sorenson re-urges and moves the Court under Fed. R. Civ. P. 12(b)(1) to dismiss this case for lack of subject matter jurisdiction. Plaintiff's only stated basis for this Court's jurisdiction is under admiralty and maritime law. Plaintiff's Original Complaint [DKT# 001], para. 11.

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2. "As a bedrock principle of federal jurisdiction, a court may sua sponte review whether subject matter jurisdiction exists in a case." Preston v. Tenet Health. Mem. Med. Ctr., Inc., 485 F.3d 804, 812 n.2 (5th Cir. 2007). "A motion to dismiss for lack of subject matter jurisdiction, Rule 12(b)(1), can be based on the lack of jurisdiction on the face of the complaint. If so, the plaintiff is left with safeguards similar to those retained when a Rule 12(b)(6) motion to dismiss for failure to state a claim is raised - the court must consider the allegations in the plaintiff's complaint as true." Williamson v. Tucker, 645 F.2d 404, 412 (5th Cir.), cert. denied, 454 U.S. 897 (1981).

3. "Admiralty jurisdiction and maritime law apply if the case is substantially related to maritime trade - including support activities like salvage - in addition to its location on navigable waters." Agip Petrol. Co., Inc. v. Gulf Island Fab., Inc., 17 F.Supp.2d 658, 659 (D.S.D. Tex. 1998)(emphasis added); See, also, Historic Aircraft Recov. Corp. v. Wrecked and Abandoned Voight F4U-1 Corsair Aircraft, 294 F.Supp.2d 132, 135-6 (D.Me. 2003)(citing Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995)). As the Voight court held: "the Court concludes that an object that is subject to salvage must be located in navigable waters." Id., 294 F.Supp.2d at 139 (concluding it had no admiralty jurisdiction over salvage in a non-navigable lake); see, also, David Wright Charter Serv. of N.C., Inc. v. Wright, 925 F.2d 783 (4th Cir. 1991) (finding no admiralty jurisdiction for an action involving a vessel on blocks 75 feet from the water for five months).

4. While Plaintiff's Complaint purports to bring this action under this Court's admiralty and maritime jurisdiction, nowhere in Plaintiff's Complaint does he state that this alleged vessel is located in, on, or under any navigable water. The only applicable facts in Plaintiff's Complaint are that the alleged vessel is "located at or about Refugio County, Texas in the vicinity of the Mission River within a 600 foot radius of a point at coordinates 28.189304 latitude and -97.203242 longitude." Complaint, paragraph 2. Taking these facts as true, Plaintiff's allegation actually negates the possibility that the vessel is in navigable waters. The Complaint states the vessel is "in the vicinity of" the Mission River - not in the Mission River.

5. Plaintiff also brings a claim for declaratory relief under 28 U.S.C. §2201. Complaint, para. 14. "Of course, the fact that the plaintiffs seek declaratory relief under 28 U.S.C. §2201, does not absolve them of the necessity of bringing themselves within a jurisdictional statute." Appling Cnty. v. Municipal Elec. Auth. of Ga., 621 F.2d 1301, 1303 (5th

Cir.), cert. denied, 449 U.S. 1015 (1980). "It is well settled that the Declaratory Judgment Act does not expand the jurisdiction of the federal courts." Stewart v. Potts, 983 F.Supp. 678, 684-5 (D.S.D. Tex. 1997). The statute itself states the court can declare rights "In a case of actual controversy within its jurisdiction ...." 28 U.S.C.A. §2201(a) (emphasis added).

6. Plaintiff alleges no facts that would bring this case within this Court's admiralty and maritime jurisdiction and raises no other basis for this Court's jurisdiction over this case or these parties. This cause should be dismissed for lack of subject matter jurisdiction.

PLAINTIFF HAS NO CLAIM FOR A "VESSEL" ON INTERVENOR'S PROPERTY

7. Plaintiff's Complaint [DKT# 001] alleges the "vessel" is located at coordinates 28.189304 latitude and -97.203242 longitude; however, this location is not alleged to be in any navigable water or affecting maritime commerce. The location at which Plaintiff asserts he has discovered this "shipwreck" is on Intervenor's property and 170 yards from the nearest waterway. See, Affidavit of Stephan Schaar, attached as Exhibit A to Plea in Intervention [DKT# 012].

8. Plaintiff's claims for declaratory and injunctive relief [DKT# 001, paragraphs 12-22], since they are not within this Court's admiralty or maritime jurisdiction, state no basis for which Plaintiff would be entitled to any relief from this Court. Assuming the facts alleged in Plaintiff's Complaint are true, in particular that there is a shipwreck located at the indicated coordinates, the Complaint states no basis to allow Plaintiff access to, possession of, or any rights in the vessel, if there is one, or the right to prevent anyone else from such access. Intervenor moves the Court to dismiss this case under Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Intervenor Marie Sorenson requests the Court dismiss this case for want of jurisdiction, alternatively dismiss this case for failure to state a claim, or alternatively enter judgment that Plaintiff take nothing by his claims and that Intervenor recover such other and further relief as to which she may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure on October 18, 2007, as follows:

Mr. Nathan Smith
P.O. Box 46243
West Hollywood, CA 90046
VIA U.S. First Class Mail

____
Terry M. Carroll, Jr.

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ORDER GRANTING DISMISSAL FOR LACK OF JURISDICTION

CAME TO BE CONSIDERED the Motion to Dismiss for Lack of Jurisdiction [DKT# _____] filed by Intervenor Marie Sorenson, and the Court, having considered the motion, the pleadings and the arguments of counsel and parties, finds the motion should be granted.

IT IS, THEREFORE, ORDERED that Intervenor Marie Sorenson's Motion to Dismiss for Lack of Jurisdiction is granted and this matter is DISMISSED and all costs are taxed against Plaintiff.

SIGNED October _____, 2007.

____
U.S. District Judge Presiding